



Bill Draft 2013-SVz-3: Rev Laws Technical, Clarifying, & Admin. Chgs.

2011-2012 General Assembly

Committee: Revenue Laws Study Committee
Introduced by:
Analysis of: 2013-SVz-3

Date: December 4, 2012
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, most of which have been requested by the Department of Revenue.*

EFFECTIVE DATE: This act would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
1	Corrects several references to "reports and statements" where there is no longer a requirement to submit a statement and substitutes the more appropriate term "return." Also replaces "make" or "making" a return with "file" or "filing." Makes other grammatical and stylistic changes to conform to drafting conventions.
2	Deletes a statutory reference due to repeal of another subsection. ¹
3	Corrects reference to period of underpayment to reflect the change in the due date of the corporate return from the third month (March 15) to the fourth month (April 15).
4	Corrects reference to the proper carryforward period under Article 3J when a taxpayer fails to qualify for an extended carryforward period due to a large investment. ²
5	Makes technical corrections related to the shift from taxable income to AGI as the starting point for determining NC taxable income. ³
6	Ensures that relevant transitional adjustments under G.S. 105-134.7 are retained by adding them to G.S. 105-134.6 with corresponding changes throughout.

¹ In S.L. 2010-89, the General Assembly provided an alternative apportionment formula for a corporation that signed a letter of commitment by September 15, 2010, certifying that it planned to invest at least \$500 million in private funds to construct a facility in a development tier one area. No company signed such a letter. The General Assembly enacted the provision at the request of Microsoft; Microsoft announced in August of 2010 that it would be locating in Virginia. Since the alternative apportionment formula provided in G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) was no longer needed, the General Assembly repealed those provision in S.L. 2011-330, s. 5. Therefore, the references to the repealed subdivisions in G.S. 105-122(c1)(2) and G.S. 105-130.4(t1) should be deleted.

² The Article 3J credits for creating jobs and for investing in business property have a 5-year carryforward period and the credit for investing in real property has a 15-year carryforward period. S.L. 2012-74 temporarily allows for a 20-year carryforward period under Article 3J for a taxpayer who makes an investment of \$100 million in business and real property in a tier one county.

³ Section 31A.1 of S.L. 2001-145 changed the starting point for calculating NC taxable income from federal taxable income to federal adjusted gross income. This change did not change the tax base or increase NC tax in any way.

7	Clarifies the method for determining the amount of credit that a taxpayer is eligible for under the credit for the disabled. The amount of the credit depends on whether a taxpayer's "North Carolina adjusted gross income" is greater than or less than a threshold income amount set out in the statute. However, the definition of "North Carolina Adjusted Gross Income" is unclear. The Department has interpreted the term to mean North Carolina taxable income with the additions of the personal exemptions, the standard deduction (or federal itemized deductions), and some of the adjustments in G.S. 105-134.6(d). The term becomes even more unclear now that the starting point for determining NC taxable income has been changed to AGI. Changing "North Carolina AGI" to "NC taxable income" closely parallels how the Department has been interpreting this credit.
8	Amends definitions related to the Streamlined Agreement and adjusts the definition of 'storage' to clarify that the purchaser must know the original purpose and location where items will be used at the time of purchase.
9	Amends the facilitator reporting requirements to recognize various business practices and recordkeeping by facilitators. The Department was advised that some facilitators provide a credit card number for use by the hotelier before, during, or after the rental of accommodations.
10	Clarifies that a credit is allowed for use tax if the tax is shown on the invoice or other documentation issued by the retailer.
11	<p>Clarifies that the sales and use tax exemption for tangible personal property delivered by the retailer for use outside the State applies to certain printed material. This exemption was adjusted during the 2011 Session at the request of the Department to add "by the retailer." However, additional adjustments are needed to retain the exemption for printed material that is not delivered by the retailer to the United States Postal Service or that is not purchased with a direct pay permit.⁴</p> <p>Amends the exemption for computer software "designed to run on an enterprise server operating system." The inclusion of the term "designed" has been problematic. The Department issued an "Important Notice" in February 2010 in an attempt to further clarify this issue. At issue are products that are designed but may not be run on an enterprise server operating system. It is burdensome for the Department to attempt to determine if the products meet the "designed" requirement.</p>
12	<p>Clarifies that among the nonprofit entities that are eligible for a refund of sales tax paid on certain purchases are single member LLCs that are disregarded for federal income tax purposes if the single member LLC engages in the same activities of the owner and the owner entity would qualify for a refund under G.S. 105-164.14.</p> <p>Replaces the term "medicines" with "over-the-counter drugs" in the statute that permits a refund of sales and use taxes to nonprofit entities and hospitals.</p>

⁴ The proposed language tracks the language that is in Sales and Use Tax Bulletin 7.

13	Ensures that statute is consistent with the Sales and Use Tax Technical Bulletin Section 46-1 E., which provides that the issuance of a direct pay permit to avoid payment of State and local sales taxes levied on hotel accommodations is a prohibited use.
14	Repeals G.S. 105-164.35, which authorizes the Secretary to recompute sales and use tax if, after examining a return, he determines the correct amount of tax is greater or less than the amount shown on the return and to credit or refund excessive payments. This statute, which is specific to sales and use tax, is unnecessary because G.S. 105-241.7 gives the Secretary this authority for all tax types.
15	Provides liability relief to retailers for erroneous information provided by the Department regarding the taxability of certain items or insufficient notice regarding a sales tax rate change as required by the Streamlined Agreement.
16	Clarifies that the 1%/\$80 privilege tax rate applies at a plant regardless of the overall industry of the taxpayer and to clarify that items must be produced for sale.
17	Clarifies that the credit allowed under Article 5F for similar tax paid to another state also applies to sales and use tax paid in this State and not just paid to another state.
18	Corrects references to Department Divisions based on reorganization. Adds various forms of identity theft to the subject matter jurisdiction of revenue law enforcement officers. Generally speaking, revenue law enforcement officers have the authority to serve and execute notices, orders, warrants, and demands, have full powers of arrest, and must be certified as criminal justice officers.
19	Clarifies that penalties and interest that accrue for a business entity are transferrable to a responsible person. The Department has received questions where the sales tax was collected, but a representative argues that the penalty and interest due on the collection at the entity level should not be transferred to the responsible person. This issue was recently addressed in Final Agency Decision issued September 18, 2012.
20	Deletes obsolete provision. The Secretary no longer makes a final agency decision in contested tax cases. Substantive final decisions are published on the OAH website.
21	Modifies the circumstances under which the Department may share information with law enforcement agencies. On occasion, the Department has shared information with the IRS or another taxing jurisdiction under G.S. 105-259(b)(3) that is connected to a criminal investigation. However, some of the information shared may be information that is not “discovered” in the course of the investigation (i.e. audits that occurred prior to the criminal investigation that led the Department to initiate the criminal investigation). While those records may be shared with other taxing agencies (i.e. the IRS) under (b)(3), there may not be

	specific authorization to share the information with prosecutors (i.e. the US Attorney) who later are working on the criminal case. In addition, the change gets rid of awkward language regarding who may receive the information. The Department has agreements with all agencies with whom it is allowed to share information listing the specific individuals allowed to receive the information. A literal reading of the current language would allow the Department to share the info only with the head of the agency. It clarifies that a prosecutorial agency is a law enforcement agency. Finally, it allows the share of information with local law enforcement or law enforcement from another state.
22	Conforms payment for TIMS to current practice. The language in the 2012-13 budget bill differed from standard practice used by DOR since the beginning of benefits funding for the project. Technically, OSBM authorizes DOR to make purchases rather than making those purchases itself.

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